



Comptroller General
of the United States

Washington, D.C. 20548

Bluth

Decision

Matter of: Cober Electronics, Inc.

File: B-235996

Date: October 5, 1989

DIGEST

A compelling reason exists for canceling an invitation for bids (IFB) for a magnetic field microwave irradiator after bid opening, and completing the acquisition using negotiated procedures where the agency's lack of experience with, and the very specific needs for the machine, render the IFB specifications inadequate to assure the minimum needs of the government are met.

DECISION

Cober Electronics, Inc., protests the Department of Health & Human Services' (HHS) cancellation of invitation for bids (IFB) No. 263-89-B(83)-0256, after bid opening and the subsequent conversion of the requirement into a negotiated procurement, for a magnetic field microwave irradiator. Cober alleges that its apparent low bid was responsive to the IFB and that negotiations are therefore unnecessary.

We deny the protest.

The National Institutes of Health (NIH) synopsisized in the Commerce Business Daily its intent to purchase, on a noncompetitive basis, a magnetic field microwave irradiator from Great Plains Labs, Inc. Cober's expressed interest in the procurement caused the NIH to competitively solicit the requirement as a brand-name or equal IFB for a magnetic field microwave irradiator, Great Plains Model NJE-2603 10kw, or equal, and the IFB requested descriptive literature from bidders offering equal products.

Bids were received from Cober, who submitted the low bid, and Great Plains. It was determined that both bids were nonresponsive. Great Plains' bid was nonresponsive because it had taken exception to the 1-year warranty requirement and Cober's bid was found nonresponsive for failure to supply sufficient descriptive literature to establish that

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its product was equal to the specified brand-name. The contracting activity determined to cancel the sealed-bid procurement and complete the acquisition through negotiated procedures pursuant to the Federal Acquisition Regulation (FAR) § 15.103 (FAC 84-5) since it found that its specifications were inadequate to express its minimum needs.

Although a contracting officer has broad discretion to cancel an IFB, he must have a compelling reason to do so after bid opening because of the potential adverse impact on the competitive bidding system of cancellation after bid prices were exposed. Southwest Marine, Inc., B-229596; B-229598, Jan. 12, 1988, 88-1 CPD ¶ 22. The failure of a solicitation to set forth specifications adequate to address and meet the agency's minimum needs constitutes a compelling reason to cancel. Snow White Cleaners & Linen Supply, Inc., B-225636, Mar. 26, 1987, 87-1 CPD ¶ 347. Our review of a cancellation is limited to considering the reasonableness of the exercise of the contracting officer's discretion. Southwest Marine, Inc., B-229596; B-229598, supra.

Here, the agency determined after bid opening that the original salient characteristics stated in the IFB did not adequately reflect the minimum needs of the government for this highly technical machine. The magnetic field microwave irradiator is a device whose function is to "sacrifice" a live laboratory animal so that it may be quickly dissected and studied. The machine works by heating the animal's brain rapidly, by means of microwave radiation. The purpose for which the NIH seeks to use this machine is to study neurochemicals in the brain, particularly an unstable compound which may be related to the development of schizophrenia. The machine must be capable of producing a rapid heat rise without overheating any spots which would cause neurochemical breakdown or alteration. To ameliorate this problem, Great Plains has a microwave irradiator with a sophisticated tuner and shielding device (a water jacket restraint), for the purpose of achieving very precise temperatures and temperature distribution within the animal's brain. The researcher for whom the machine is being procured has performed approximately 9 months of research using the Great Plains machine, and in order to continue his research and not invalidate 9 months of work, he must be ensured of a machine that yields the same consistent pattern of neurochemical distributions in various parts of the brain.

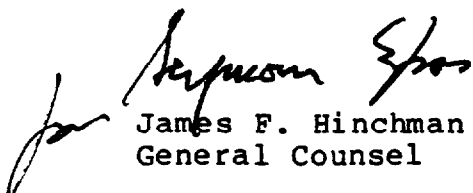
The IFB did not request bidders to submit test data describing performance characteristics in live animals, nor did it request evidence to show that the "water jacket" restraint was "safe and non-stressful" to the animals so as

not to elevate their stress-related neurochemicals. Since the IFB lacked the specificity to ensure that the pattern of neurochemical distributions would be the same, the contracting officer determined that converting the requirement into a negotiated procedure would enable the agency to require offerors of an "equal" product to make their machines available for a pre-award capability demonstration. The agency notes that this is especially necessary with respect to the machine offered by Cober since it is a model that was specially designed for this procurement and has never been tested.

We find that the record establishes a compelling reason to cancel the IFB and complete the procurement using negotiated procedures. The actual minimum needs of the agency are clearly more specific than revealed in the IFB and, in light of the highly technical requirements, we do not find it unreasonable for the agency to require a pre-award demonstration of the product's capabilities. Indeed, in its comments on the report, the protester admits that it cannot determine the government's needs.

Since we have determined that the IFB was defective in specifying the government's minimum needs, we find it unnecessary to address whether Cober's bid was in fact responsive to the IFB.

The protest is denied.


James F. Hinchman
General Counsel